

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
D & G MECHANICAL INSULATION, INC.,)

Appellant,)

v.)

PUGET SOUND AIR POLLUTION CONTROL)
AGENCY,)

Respondent.)

PCHB NO. 86-208

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of two notices and orders of civil penalties totaling \$2,000 for purported violations of asbestos handling regulations at the plant of Reichhold Chemicals, Inc., on the Tacoma tide flats, came on for hearing before the Board on September 28, 1987, at Lacey, Washington. Pursuant to Chapter 43.21B.230 RCW, respondent PSAPCA elected a formal hearing and the matter was officially reported by Gene Barker and Associates.

Respondent public agency appeared and was represented by Keith D. McGoffin, attorney at law. Appellant D&G Mechanical Insulation, Inc., was represented by its attorney, Peter N. Ralston.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence, and
3 contentions of the parties the Board makes these

4 FINDINGS OF FACT

5 I

6 The Puget Sound Air Pollution Control Agency (PSAPCA) is an
7 activated air pollution control authority under terms of the state's
8 Clean Air Act, empowered to monitor and enforce federal and state
9 emissions standards for hazardous air pollutants, including work
10 practices for asbestos.

11 PSAPCA has filed with the Board certified copies of its'
12 Regulations 1 and 2, of which we take official notice.

13 II

14 D&G Mechanical Insulation, Inc., (D&G) is a certified asbestos
15 removal contractor located in Tacoma, Washington, and was doing
16 asbestos removal work for Reichhold Chemical at a plant in the area
17 known as Tacoma tide flats during the month of October 1986.

18 III

19 In September of 1986, D&G filed with PSAPCA a Notice of Intent to
20 Remove or Encapsulate Asbestos. The notice identified Reichhold
21 Chemical as the site of the project and described the project as
22 involving 900 linear feet of asbestos from "Kettle Room Building and
23 Associated pipe trestles."

IV

On October 6, 1986, a PSAPCA inspector visited Reichhold Chemical plant regarding the Notice of Intent to Remove or Encapsulate Asbestos. The inspector noted that asbestos had been removed from lines running to the Dow Therm boiler which is located in a three-sided enclosure approximately 25 feet southwest of the kettle room. The inspector concluded that this removal was not covered within the project description set forth in the Notice of Intent. The kettle room was also inspected. Asbestos removal work had not yet started in this room. All doors to the kettle room were open and all doors except the north door had a yellow tape with an asbestos warning printed on it.

The PSAPCA inspector walked through the unmarked north door into the lower level of the kettle room and observed approximately 20 yellow bags, printed with the asbestos warning, stacked in the northwest corner of the room.

V

D&G's estimator and project manager filled out the Notice of Intent in consultation with personnel at Reichhold. The use of the term "Associated pipe trestles" was intended to include pipes leading from the kettle room building to the place where those pipes were connected on the other end.

We find that the asbestos removal observed in the Dow Therm boiler enclosure was within the intended scope of the Notice. We find,

1 further, that the project description given in the Notice did not
2 mislead PSAPCA's inspector or contribute in any way to the agency's
3 being unaware of the scope of the project untaken.

4 VI

5 On October 13, 1986, at approximately 9:40 a.m. the PSAPCA
6 inspector again visited the Reichhold plant. He observed employees of
7 appellant removing material from the top of a pipe trestle leading
8 from the kettle room. He saw what he described as "sparkling"
9 material being released into the air during the process. He did not
10 see any material fall to the ground; but on the ground in the vicinity
11 of the trestle the inspector found some pieces of a dry, friable
12 material he thought was asbestos.

13 Samples of the material were collected for analysis and
14 photographs of the material were taken.

15 VII

16 On October 17, 1986, PSAPCA received an asbestos analysis report
17 from the Department of Ecology lab stating the samples contained 70 to
18 75 percent amosite asbestos.

19 VIII

20 The pipe trestle where workers were observed on October 13, 1986,
21 contained pipes insulated with a non-asbestos fiberglass material, in
22 addition to the asbestos-wrapped pipes. D&G was removing the
23 fiberglass mat from pipes as well as the asbestos insulation. On
24

1 considering all the evidence, we find that D&G employees were not
2 engaged in asbestos removal from the pipe trestle at the time PSAPCA's
3 inspector made his observations.

4 Moreover, we are not convinced that the asbestos found on the
5 ground under the trestle came to rest there as a result of D&G's
6 removal efforts. At the time in question, Reichhold's plant was in a
7 state of disrepair. Old pipe insulation of all types was generally in
8 a deteriorated condition. In some places it was hanging off the
9 pipes. Debris of one sort or another lay on the ground all over the
10 plant. The sampling results do not necessitate an inference the
11 materials sampled were dropped by D & G's workers.

12 IX

13 On October 23, 1986, PSAPCA mailed two documents entitled "Notice
14 and Order of Civil Penalty" (Nos. 6538 and 6539) to D&G Mechanical,
15 Inc., and Reichhold Chemical, Inc., alleging violations of asbestos
16 work practices of October 6 and 13, 1986, and assessing a \$1,000
17 penalty with each Notice.

18 Notice No. 6538 alleged the following violations on October 6,
19 1986:

- 20 1. Section 10.03(a) of Regulation I: Failure by owner
21 or person conducting an asbestos removal or encapsulation
22 operation to have filed with the Control Officer written
23 notice of intention to remove or encapsulate asbestos
24 from the asbestos removal operation --- Notice of
25 Violation No. 20733.

2. Section 10.04(b)(2)(iii)(C) of Regulation I: Failure to contain the asbestos-containing materials in a controlled area at all times until transported to a waste disposal site --- Notice of Violation No. 20734.

Notice No. 6539 alleged the following violations on
October 13, 1986:

1. Section 10.04(b)(2)(ii) of Regulation I: Failure to adequately wet the asbestos-containing materials when being stripped from facility --- Notice of Violation No. 20737.

2. Section 10.04(b)(111)(A) & (D) of Regulation I:
Failure to adequately wet asbestos materials exposed
during cutting or disjointing operations and failure to
carefully lower to the ground (not dropping or throwing)
via dust-tight chutes or containers --- Notice of
Violation No. 20737.

Feeling aggrieved by these penalties, appellant filed an appeal with this Board which we received November 20, 1986.

X

Any Conclusion of Law hereinafter determined to a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.
Chapters 70.94 and 43.21B RCW.

II

PSAPCA has adopted regulations on the removal of asbestos which

FINAL FINDINGS OF FACT,
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1 are set forth in its Regulation I, Article 10. In a penalty case the
2 agency has the burden of proving that these regulations were violated.

3 III

4 For October 6, 1986, PSAPCA's \$1,000 penalty was based on the
5 alleged violation of 1) the requirement for filing a notice of intent
6 to remove asbestos (Section 10.03(a)) and 2) the requirement that
7 asbestos materials that have been removed be contained in a controlled
8 area at all times until transported to a waste disposal site (Section
9 10.04(b)(2)(iii)(C).)

10 We conclude that the notice filed by D&G in this case was adequate
11 in its description of the asbestos removal project at Reichhold
12 Chemical to fulfill the requirements of Section 10.03(a).

13 However, we conclude that the asbestos materials found on the
14 lower level of the kettle room were not contained in a controlled area
15 in compliance with Section 10.04(b)(2)(iii)(C). As relevant to this
16 case, "controlled area" is defined as "an area to which only certified
17 asbestos workers or other authorized personnel have access." Section
18 10.02(j). Here access was obtained simply by walking through an
19 unmarked, unlocked door.

20 IV

21 For October 13, 1986, PSAPCA's \$1,000 penalty was based on the
22 alleged violation of two provisions concerning the wetting of asbestos
23 materials during removal operations. (Sections 10.04(b)(2)(ii) and
24 10.04(b)(2)(iii)(A) & (D).) Based on our findings, we conclude that

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1 PSAPCA failed to prove a violation by D&G of either of these
2 provisions. (See Finding of Fact VIII.)

3 V

4 Any violation of regulations dealing with so dangerous a material
5 as asbestos is serious. Lack of containment involves a risk of
6 exposure. We think it vital that all persons associated with asbestos
7 removal projects be induced to exercise the highest degree of care to
8 insure that the risk of harm is minimized. Under RCW 70.94.431, a
9 fine of \$1,000 per day per violation may be assessed in situations
10 which do not present aggravated enforcement problems.

11 Accordingly, we decide that a penalty of \$1,000 is reasonable for
12 the one violation which we sustain.

13 VI

14 Any Finding of Fact which is deemed a Conclusion of Law is hereby
15 adopted as such.

16 From these Conclusions, the Board enters this
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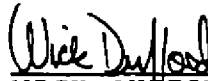
ORDER

Notice and Order of Civil Penalty No. 6538 is reversed as to the violation of Section 10.04(b)(2)(iii)(C) and affirmed as to violation of Section 10.03(a). The penalty thereunder is sustained.

Notice and Order of Civil Penalty No. 6539 is reversed.

DONE this 13th day of July, 1988.

POLLUTION CONTROL HEARINGS BOARD



WICK DUFFORD, Chairman



JUDITH A. BENDOR, Member